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Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES

ALLEN FREDERICK STEWART
Petitioner,

v.

JENNIFER SARAH WALKER, ET AL
Respondents,

On Petition for Writ of Certiorari to the Massachusetts Appeals Court

---

PETITION FOR WRIT OF CERTIORARI

December 12, 2008

Petitioner
Allen F. Stewart
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(954) 770-3605

Respondent
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QUESTIONS PRESENTED FOR REVIEW

1. Did Congress vest Paternity Affidavits, under 42 U.S.C. Ch. 7, IV-D § 666, to have the equivalent force and effect as a "judicial proceeding" under U.S. Const. art. IV, § 1 and 28 U.S.C. §1738 that statutorily grants co-equal parental rights?
2. Has Massachusetts exceeded the authority allowed by U.S. Const. art. IV, §1, implemented by 28 U.S.C. §1738 and the Equal Protection and Due Process Clause of the 14th Amendment, by failing to give *effect* to Florida's paternity proceeding by the UCCJEA and the federally mandated UIFSA, as a "child custody determination" and "child support order" preserving jurisdiction under PKPA 28 U.S.C. §1738A (d) and §1738B (d)?
3. Are the UCCJA, its versions, and any parts thereto, repugnant to the US Constitution? And, has Petitioner's constitutional rights been violated by Massachusetts' use of the Act?
4. Subsidiary Question: Does US Const. art. IV, §2, vest equal protection to *all* citizens under the UCCJEA's analysis of the PKPA?

LIST OF ALL PARTIES

The Parties are correctly listed in the caption. No Party is a parent, subsidiary or affiliate of any company or corporation.

This Petition alleges the likely repugnance of a Uniform State Act to the US Constitution, which may require additional parties.

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REASONS FOR GRANTING THE WRIT

1. Certiorari is warranted by: (a) the aggravated usurpation of statutory authority under the US Constitution as implemented by Federal law; (b) the violation of longstanding, firmly established rulings by this Court; (c) the division of PKPA case law which has declared the jurisdictional authority of the UCCJA invalid; (d) and clear abuse of discretion. 32

2. The Massachusetts Appeals Court has distorted, altered and/or abrogated the Federal IV-D Statute, narrowing its scope and congressional intent in such a way that it has resolved a

Federal issue in conflict with recent State Supreme Court rulings, and well beyond what a "fair reading" of the statute would produce, creating constitutional, jurisdictional and due process problems – a substantially recurring issue that has not been, but should be settled by this Court. 34

3. Certiorari should be granted as a vindication of public justice: (a) to promote interstate comity in furtherance of legal establishments of paternity by signed affidavit, (operation of law) under the nationally binding and vital PKPA; and (b) to protect and guarantee the constitutionally protected parental, substantive and procedural due process rights, liberty interests, obligations, privileges and immunities of their unwed signatories. 36

4. Certiorari should be granted in aid of the appellate jurisdiction of this Court to enforce compliance with the Federal Constitution and Federal law due to an aggravated and substantial usurpation of power. 38

5. The advent of the UCCJEA and the UIFSA warrants the weighing of the UCCJA, its case law, any of its versions, and any parts thereto, for repugnance against the US Constitution. 38

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OPINIONS BELOW
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1. The July 18, 2008 Rule 1:28 Published Decision and Memorandum of the Massachusetts Appeals Court..... A1

2. The August 21, 2008 (unpublished) Order of the Massachusetts Appeals Court denying rehearing, 2007-P-0374..... A6

3. The September 8, 2008 (unpublished) order of the Massachusetts Supreme Court denying discretionary review..... A7

STATEMENT OF JURISDICTION

This petition seeks review of the July 18, 2008 Judgment and Decision of the Massachusetts Appeals Court. A timely petition for rehearing was denied on August 21, 2008.

A timely petition for further appellate review to the Massachusetts Supreme Court was denied on September 8, 2008.

Jurisdiction in this Court is invoked under 28 U.S.C. §1257(a).

Jurisdiction to render declaratory relief is available under 28 U.S.C. §2201(a) and any other relief under 28 U.S.C. §2202.

This Petition alleges the repugnance of a Uniform State Act, the UCCJA, and any of its versions or parts thereto to the US Constitution. As a manifestation of the PKPA (an Act of Congress) this petition seeks to declare the Act invalid since the enactment of its successor, the UCCJEA.

This Petition has been forwarded pursuant to 28 U. S. C. § 2403(a) and (b).

CONSTITUTIONAL PROVISIONS, ACTS, STATUTES, RULES INVOLVED

Public and Legislative Acts Clause, Article IV, § 1 of the US Constitution
(1st and 2nd sentences)

Article IV, § 2 of the US Constitution

Equal Protection & Due Process Clause, 14th Amendment, § 1 of the US Constitution

1968 Uniform Child Custody Jurisdiction Act (96 A.L.R.3d 968, 1980)
Mass. Gen. Law c. 209B. "MCCJA." For electronic version,
www.law.upenn.edu/bll/archives/ulc/fnact99/1920_69/uccja68.htm.

1980 Parental Kidnapping Prevention Act
28 U.S.C. §1738A, §1738B. For electronic version, www.nccusl.org/update, Final Acts and Legislation.

1997 Uniform Child Custody Jurisdiction and Enforcement Act
Fla. Stats. §§61.501-61.542 (2002). For electronic version, www.nccusl.org/update, Final Acts and Legislation.

1998 Uniform Interstate Family Support Act
§§88.0011-88.9051 Fla. Stat. (2004). Last Revision, 2001. For electronic version, www.nccusl.org/update, Final Acts and Legislation.

2000 Uniform Parentage Act
Amended 2000, Revised in 2002. Note: The "Full Faith and Credit" section 311 is identical in both versions. For electronic version, www.nccusl.org/update, Final Acts and Legislation.

1996 Personal Responsibility and Work Opportunity Reconciliation Act
(Public Law 104-193, 110 Stat. 2105)

28 U.S.C. § 1257 (a).

28 U.S.C. § 1738.

28 U.S.C. § 2201 (a).

28 U.S.C. § 2202.

28 U.S.C . § 2403 (a) and (b).

42 U.S.C. Ch. 7, IV-D § 666.

Florida Statute § 742.06 (2003)

Florida Statute § 742.10 (2003)

MASSACHUSETTS, RULE 1:28.

MASSACHUSETTS, RULE 60B (4).

ABBREVIATIONS

("PRWORA") Personal Responsibility Work Opportunity Reconciliation Act.
("Federal 'IV-D' Statute") Federal Statute Relating to Parentage.
("UCCJA") or ("MCCJA") Uniform Child Custody Jurisdiction Act.
("UCCJEA") Uniform Child Custody Jurisdiction and Enforcement Act.
("2000 UPA") Uniform Parentage Act.
("UIFSA") Uniform Interstate Family Support Act.

SUMMARY OF THE ARGUMENT

This Petition comes nearly twelve (12) years after Congress passed the Federal 'IV-D' Statute Relating to Parentage; eleven (11) years after the UCCJA was repealed by the UCCJEA; ten (10) years after the UIFSA was federally mandated to be adopted unchanged by every state; and eight (8) years after the 1973 UPA was amended to advocate equal treatment between marital and non-marital children.

Although this matter arises out of a disputed determination of jurisdiction under the PKPA, it principally involves the division of the "atom of sovereignty" between the states, by the existence of two Uniform Acts that interpret jurisdiction under the PKPA differently.

Massachusetts is one of four states that still retain the UCCJA in its statutes. The UCCJEA has a repealing clause against the use of the UCCJA, its versions, or any parts thereto – because though they are similar, they differ in critical jurisdictional areas.

Here, Massachusetts has used its UCCJA to undermine the new enforcement provisions, protections and immunities of the UCCJEA and the UIFSA, which has caused enormous constitutional, jurisdictional, due process and civil rights problems. In doing so, it has:

1. Abrogated the congressional intent of the Federal IV-D Statute to negate the effect of a Voluntary Acknowledgment of Paternity as having the equivalent force and effect of a *'judicial proceeding'* under US Const. art. IV, §1, (1st and

2nd sentences), implemented under 28 U.S.C. §1738;

2. Massachusetts failed to fulfill the constitutional command, implemented under 28 U.S.C. §1738 (upheld by longstanding rulings by this Court) by either refusing or failing to give effect to Florida's decree as it was given effect by the UCCJEA and the UIFSA as a "custody determination" and a "child support order" by 28 U.S.C. §§1738A & B;

Federal law prohibits the infringement upon another State's establishment of *paternity*, because *paternity* proceedings are now sanctioned under the PKPA. This prohibition is expressly declared by the Federal IV-D, and promulgated by the 2000 UPA.

This is not an isolated case of failed statutory interpretation of the PKPA. Massachusetts has used a repealed and obsolete Uniform State Act to rule by numerous established-to-be defective interpretations of the meaning, purpose and intent of the federal PKPA as declared in 1997 by the National Conference of Commissioners on Uniform State law.

Nearly every state has abandoned the UCCJA to adopt the UCCJEA. Massachusetts' continued use of the UCCJA has unconstitutionally "*bootstrapped*" Florida's sovereign right to administer justice to its decrees, creating tremendous constitutional, jurisdictional and due process and civil rights problems.

Massachusetts has eviscerated Petitioner's liberties, privileges, immunities, and constitutionally protected parental rights set-up under the PKPA as conferred by the UCCJEA, and the UIFSA.

Petitioner, having no connection to the State of Massachusetts has suffered pains and penalties, including the loss of his child. Great effort has been taken to apprise Massachusetts of a genuine conflict of state law, and its trespass of that authority allowed under US Const. art IV, §1 as implemented by 28 U.S.C. §1738 by the failure to give full faith and credit to Florida's decree as a "judicial proceeding" invoking the modification protections of PKPA §1738A (d) and §1738B (d), pursuant to the UCCJEA and the UIFSA.

The UCCJA, its outstanding versions, and any parts thereto must be held by this Court to have no force of law since the enactment of the UCCJEA – quite simply, the UCCJEA must be deemed the *law of the land.*

STATEMENT OF THE CASE

Relevant History

The parents had lived together unmarried in Florida for years, and planned the birth of ("T.A.S."), who was born on February 1, 2003.

On February 3 2003, parentage/paternity was legally established at the hospital, by operation of law via signed and notarized "*Paternity Affidavit of Natural Parents*" executed in accordance with §742.10 Fla. Stat. (2003), given jurisdiction under the Federal IV-D Statute.

The custody proceeding (as defined by the UCCJEA) was conducted administratively by Florida's Department of Health.

After the irretrievable breakdown of their relationship, Respondent unilaterally withheld T.A.S. in Massachusetts, from his Florida home without notice, consent or a Court order from a Florida court.

When Petitioner threatened legal action for the return of T.A.S. to Florida, Respondent filed a *Complaint to Establish Paternity* (case no. 04W0515PA1) in the Massachusetts Bristol County Family Court seeking to establish paternity, and for custody and support.

The Massachusetts Family Court

On July 29, 2004, the Family Court failed to establish the effect of a Florida's *paternity* proceeding under the UCCJEA or the UIFSA and ratified Florida's establishment by default of Petitioner's failure to appear. (Case no. 04W0515PA1, Complaint to Establish Paternity, 4-23-04; Affidavit dated 2-23-04; Transcript, MA, Bristol, case no. 04W0515PA1, 7-29-04, LaStaiti, J.; Order 7-29-04).

In September 2004, Petitioner, appearing *Pro Se*, sought to return his son to Florida, but was ordered by the Family Court to visit his son in the State of Massachusetts. (Transcript, MA, Bristol, case no. 04W0515PA1, 9-04-04, LaStaiti, J.)

In February 2005, Petitioner Motioned to Dismiss the proceedings for lack of jurisdiction, and filed an Emergency Custody Petition in Florida citing allegations of parental abduction.

On March 17, 2005, Petitioner presented a State certified copy of Florida's valid custody

determination in Massachusetts and sought to dismiss the proceedings for lack of jurisdiction by the PKPA.

Petitioner had just begun to present his argument when he was stopped mid-sentence by the Massachusetts Family Court Judge, saying:

> "[To Petitioner], I am going to stop you right here. I am sufficiently familiar with the facts of this case to rule that there has never been any question in my mind that Massachusetts has jurisdiction, and I am going to continue to exercise jurisdiction on that basis until there is a ruling otherwise." (Transcript, MA, Bristol, case no. 04W0515PA1, 3-17-05, p4 at 21-25).

The Judge refused to hear Petitioner's jurisdictional arguments and gave Petitioner no choice (in order to visit with his son) than to sign an Affidavit, saying:

> "There will be no visits in Florida while there are pending Complaints. It's quite that simple." The judge told Petitioner that his only "choice" was to "sign an affidavit, [and] provide the court with an affidavit that [he would] not file any charges against [Respondent] in Florida, and that [if he dropped] whatever charges [he] had filed, [she] would consider lifting [the] restriction on the child going to Florida. But as long as that threat's there, I, as Judge, will not allow that child to go to Florida. So, the choice is yours and now is the time to make that choice." *Id. at 22.*

Petitioner was forced to close Florida's custody petition by the Family Court's declaration that, "Legal and physical custody of [T.A.S.] was remaining with mom." *Id. p10 at 13.*

Given no other choice, Petitioner signed stipulations over custody, support and jurisdiction.

Before the ink had dried, Respondent petitioned for modification, seeking to: (1) end Petitioner's visitation rights; (2) for retro-active child support back to the child's date of birth; and (3) for sole custody.

In August 2006, Petitioner motioned for Respondent to prove Massachusetts' jurisdiction in furtherance of Florida's custody decree by the PKPA.

Respondent never discusses the effect of a paternity proceeding under the UCCJEA or the UIFSA but instead used UCCJA case law dated prior to the UCCJEA's enactment to invalidate a paternity proceeding as a "custody proceeding." The document never mentions the UIFSA. (See Plaintiff's Memorandum, 10-25-06)

In October 2006, Petitioner Motioned to vacate the March 17, 2005 Judgment under Rule 60B(4) for want of custodial jurisdiction by the PKPA.

In November 2006, Petitioner loudly presented the jurisdictional differences between the UCCJA and the UCCJEA adamantly declaring that the Court must give effect to Florida's paternity proceeding as a "custody proceeding" as defined by the UCCJEA, not the UCCJA. (Transcript, MA, Bristol, case no. 04W0515PA1, 11-01-05, LaStaiti, J.)

On November 15 2006, the Family Court upheld its jurisdiction employing pure *UCCJA* case law, nary mentioning the effect of Florida's paternity proceeding under the UCCJEA or the UIFSA.

Appeal ensued.

Proceedings continued in the Family Court however, under Respondent's Complaint for Modification.

Tangentially related to *custodial* jurisdiction under the UCCJEA, supervening conflict was found by the Court's failure to use the UIFSA independently to determine its jurisdiction over *child support.*

Petitioner motioned for Judicial Review of the PKPA (Denied), and filed a new petition in the Florida Court's to obtain an opinion by a Florida Judge.[1]

In February 2007, Petitioner filed an Emergency Application for Stay in the Massachusetts Appeals Court seeking injunctive relief against the Massachusetts Family Court for the blatant violation of the PKPA. (Denied, 3-14-07, Duffly, J.).

In October 2007, by leave of the Appeals Court, Petitioner filed a *Motion to Grant Full Faith and Credit to Florida's Judgment of Paternity* in the

---

[1] Florida Judge Linda Vitale was patently unaware that a paternity affidavit held the same status as a judicial paternity proceeding under the Federal IV-D Statute. Vitale dismissed the Florida case incorrectly presuming that, "There was never a prior *paternity case* filed in Florida." (See, Case no. 06-14025, FL, Broward County, 17th Jud. Dist., Case Management Order, Finding #2, Vitale. J.)

Family Court, specifically setting up the following federal claims:

1.) Citing *Williams v. North Carolina*, 325 U.S. 226 (1945) (Full faith and credit to public acts, records, and judicial proceedings of another state), the US Constitution Article IV, §1 demands that Massachusetts give Full Faith and Credit to Florida's decree of parentage, giving *effect* to the proceeding under the UCCJEA as a "child-custody proceeding" and "child-custody determination." Petitioner also raised these claims as a Federal Statutory claim under 28 U.S.C. §§1738, 1738A and 1738B (See Motion to Grant Full Faith and Credit, 10-07, Issue #1, p17); "...Massachusetts must give full faith and credit to the UCCJEA, and its sweeping definitions..." *Id. at p4.* "If in fact, the Parties executed a Paternity Affidavit...in Florida on February 3, 2003...Article 4, §1 of the US Constitution [demands] that Massachusetts must give Florida's Judgment of Paternity full faith and credit. The question for this court, is simply whether Florida's Judgment remains valid – a question whose resolution vests Florida by the UCCJEA (and the UIFSA) with continuing exclusive jurisdiction. . ." *Id. at p5.*

2.) The UIFSA must be used independently to determine continuing jurisdiction over *child support* under the PKPA, vested from Florida's legal determination of parentage;

3.) Petitioner argued the affirmative defense *collateral estoppel by Judgment*, claiming Respondent's lack of standing to file the Paternity action, and urged due process and

constitutional violations by the unlawful ratification of Florida's establishment of paternity and the misapprehension of its effect under the UCCJEA and the UIFSA.

Petitioner mailed full length copies of the UCCJEA, the UIFSA, the 2000 UPA, and the Federal IV-D Statute to the Massachusetts Family Court, and to Respondent's Attorney.[2]

On February 1, 2008 the Motion was summarily denied.[3] In utterly clear contravention with the Federal IV-D Statute, the Family Court Judge said:

> "I want to point out very clearly that an Acknowledgment of Paternity is not a *Judgment* in Florida or Massachusetts." (Transcript, Bristol, MA, 04W0515PA1, 2-1-08, p18 at 1-25, LaStaiti, J.)

The Massachusetts Appeals Court

The Order denying the *Motion to Grant Full Faith and Credit* was consolidated into Appellate case 2007-P-0374 by Leave of the Appeals Court.

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[2] "Whenever it becomes necessary for a court of one state, in order to give full faith and credit to a judgment rendered in another state, to ascertain the effect which it has in that state, the law of that state must be proved." *Hanley v. Donoghue*, 116 U.S. 1, *Hn4*, (1885).

[3] The Family Court's first Memorandum of November 15, 2006 cited PKPA case law dating from 1985-1997 under the UCCJA, that has "no continuing validity following the enactment of the UCCJEA" quoting *Staats v. McKinnon*, 899 So. 2d 357, Hn38, (2006). The Family Court's subsequent Memorandum dated February 14, 2008, has no case law.

(Mass. App. Ct., 2007-P-0374, Order, 2-29-08, Berry, J.)

Petitioner argued the congressional intent of the Federal IV-D Statute which gives Paternity Affidavits the equivalence of *Judgments*, and prohibits the ratification of another State's establishment. (Brief of the Appellant, pgs.2, 12-17, 19 and 20).

Petitioner demanded that Florida's decree be given full faith and credit under Article IV, section 1 of the US Constitution as implemented by 28 U.S.C. §1738 as the equivalence of a *judicial proceeding*. (Brief of the App., 2007-P-0374, p.20)

To establish their *effect* under the PKPA, Petitioner cited a plethora of recent PKPA case law supported by the Commissioner's declaration in the 2000 UPA which demands (by the Federal IV-D Statute) that they invoke PKPA §1738A(d) [4] and 1738B(d).

Petitioner raised more than sixty (60) errors made by the Family Court, caused by the misplaced reliance on the obsolete UCCJA and its case law.

On July 18, 2008, (without oral argument) the Appeals Court upheld Massachusetts' jurisdiction exclusively using UCCJA, G. L. c. 209B, § 2(a) (1) (i), which reads:

---

[4] PKPA 1738A(d) - The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

"(a) Any court which is competent to decide child custody matters has jurisdiction to make a custody determination by initial or modification judgment if (1) the commonwealth (i) is the home state of the child on the commencement of the custody proceeding."

The Appeals Court ignored the UCCJEA's "extended home State provision" and held that because T.A.S. had lived in Massachusetts:

"...for at least six consecutive months prior to commencement of the custody proceeding, Massachusetts was the child's home State, and the jurisdiction was proper."

The Court made no attempt to establish the effect of a *paternity* proceeding under the UCCJEA or the UIFSA and gave no credence to Florida's February 3, 2003 decree, saying:

"...no custody proceedings were initiated in any other State prior to the April, 2004, commencement of custody proceedings in Massachusetts."

"We reject the father's argument, unsupported by Massachusetts or Florida law, that the voluntary acknowledgment of paternity signed in Florida was a 'proceeding in a court of another state where such court of that state is exercising jurisdiction consistently with the provisions of this section for the purpose of making a custody determination,' such that a Massachusetts court may not exercise jurisdiction. (UCCJA) M.G.L. c. 209B, § 2(d)." (A-2 to A-3)

Petitioner sought rehearing loudly professing the congressional intent of the Federal IV-D Statute, and alleging that an extreme conflict of state law existed by the misplaced use of the obsolete precepts of the UCCJA to undermine the revised language and provisions of the UCCJEA and the UIFSA – which had negated the meaning purpose and intent of the PKPA.

Petitioner asserted that the UCCJEA supersedes the UCCJA and urged rehearing with oral argument under the constitutional command implemented by 28 U.S.C. §1738 that the Court give effect to Florida's decree "in accordance with the revised language and jurisdictional analysis of the UCCJEA, the UIFSA and the 2000 UPA (the Federal IV-D statute) as they apply to the PKPA" §1738A (d) and §1738B (d). (Pet. for Rehearing, 2007-P-0374, 7-25-08, p.10).

Rehearing Denied. (A-6)

<u>The Massachusetts Supreme Court</u>

Florida's preemptive jurisdiction under the PKPA had been usurped by the comingled effect of three distinctly separate but related Federal issues:

1. The proper effect was not given to Florida's paternity proceeding in accordance with the congressional intent of the Federal IV-D statute, as the equivalence of a judicial proceeding and "Judgment" under 28 U.S.C. §1738;
2. Using the UCCJA, the Court failed to give the proper effect to Florida's establishment of parentage/paternity as rendered and defined by the UCCJEA and the UIFSA as a "custody

determination" and a "child support order" under 28 U.S.C. §§1738A(d) and B(d).

3. The improper use of the UCCJA had undermined the effect of Florida's proceeding as if it had no intrinsic extra-state value.

Petitioner's Application for Further Appellate Review fairly presented these issues, each necessary to reach a determination of jurisdiction under the PKPA. *Honeyman v. Hanan*, 300 U.S. 14, *Hn1*, (1937). (FAR 17176)

In direct terms and with fair precision, Petitioner presented one (1) question seeking to affirm the Commissioner's declaration in the Full Faith and Credit section (§311) of the 2000 UPA.[5]

Petitioner challenged the validity of the UCCJA by systematically addressing its conflict with the provisions and precepts of the UCCJEA and the UIFSA.

Petitioner stressed the practical effect of the Appeals Court's use of the abolished precepts of the UCCJA as a "hostile invasion of interstate comity under the PKPA"; an egregious violation of due process; an abrogation of the Federal IV-D statute, and a violation of the vested constitutional and civil rights of left-behind parents in UCCJEA states.

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[5] "Federal law requires that an acknowledgment of paternity has the same status as a "judgment," under (US Const. art IV, §1) 28 U.S.C. § 1738, a "child custody determination," under 28 U.S.C. § 1738A, and a "child support order," under 28 U.S.C. § 1738B."

Petitioner strongly urged firm reliance on the prefatory notes and comments of the UCCJEA and the UIFSA when determining plenary jurisdiction over children unilaterally brought to within its borders. *Staats v. McKinnon* 899 So.2d 357, (2006)

The application clearly advocates the desperate need for the UCCJEA and the UIFSA to become "fluently and correctly engrained in Massachusetts decisional law" (p.32) to prevent Massachusetts from becoming a "safe haven" for child abductors – especially, for legitimized children born out of wedlock.

There can be no question that the application stresses the absolute need to obey the constitutional command implemented under 28 U.S.C. §1738 and prays that the High Court resolve the Federal issues born from a valid and indisputably genuine conflict of state law.

The application was scheduled for vote on August 21, 2008, and was denied[6] on September 8, 2008 without opinion. (A-7)

Certificate Requested

On October 16, 2008 Petitioner applied for a certificate (or some other expression) from the Massachusetts Appeals Court attesting that these Federal issues were raised, and were altogether necessary for a determination of the Appeal.

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[6] "There can be no question as to the proper presentation of a federal claim when the highest state court passes on it." See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 75 L. Ed 2d 206, 103 S. Ct 1303, *Hn14* (1983)

Petitioner cited as jurisdiction to render the certificate, this Court's posture in the cases *Dixon v. Duffy*, 344 U.S. 143, 145 (1952) and *Department of Mental Hygiene v. Kirchner*, 380 U.S. 194, 201 (1965) (compliance was gained by vacating the lower court's judgment to allow further proceedings to establish the Federal issues).

The Massachusetts Appeals Court has not acted on this request.

Ripe for Federal Review

Massachusetts has been presented with a significant extra-state conflict of law,[7] and has "bootstrapped"[8] Florida's jurisdiction through the

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[7] ". . .there can be no doubt from the record that a claim under a federal statute or the United States Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the manner required by the state law." *Webb v. Webb*, 451 U.S. 493 (1981), *LEdHn1*. (US Supreme Court's jurisdiction over federal full-faith-and-credit claim, held lacking, and certiorari petition dismissed, where federal claim had not been raised or ruled on in state court). It is a well-settled principle that federal review of judgments rendered by state courts can only occur in the US Supreme Court, on appeal or by writ of certiorari. See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 75 L. Ed 2d 206, 103 S. Ct 1303, *Hn15* (1983) (The United States Supreme Court to review only judgments in state court cases in which a federal issue was raised); *Rooker vs. Fidelity Trust Co.* 263 U.S. 413, 416, 68 L. Ed 362, 44 S. Ct 149 (1923); see also *Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U.S. 281, 296, 26 L. Ed 2d 234, 90 S. Ct 1739 (1970).

[8] *Bootstrap Doctrine*; "...the idea being that a court which initially had no jurisdiction can, when the issue is litigated (ignored, or passed upon), lift itself into jurisdiction by its own incorrect but conclusive finding that it does have jurisdiction." Black's Law Dictionary, 8th Ed.

"sheer and manifest evasion" of Petitioner's arguments concerning the law. See *Arthur v. Fox*, 108 U.S. 125, (1883) (sheer and manifest evasion of the law)

Massachusetts has failed to exercise the judicial duties imposed by the Constitution through the abrogation of the Federal IV-D statute, the PKPA, and the UIFSA.

Petitioner has exhausted all available means to gain compliance. The outright rejection of his arguments, without so much as oral argument, must be deemed an extreme abuse of discretion.

Certiorari by writ is necessary, whereas this Court has ultimate jurisdiction to enforce compliance with the clear and indisputable duty to comply with the Constitutional command given by Article IV, §1, as implemented by 28 U.S.C. §1738, and the 14th Amendment. See generally, *Williams v. North Carolina*, 325 U.S. 226, *Hn7*, (1945). See also *McDougald v. Jenson*, 786 F.2d 1465, *Hn13* (1986); *Idaho v. Coeur d'Alene Tribe of Idaho*, 117 S. Ct. 2238, 138 L.Ed.2d 438 (1997).

Insofar as its jurisdictional analysis, this Petition draws into question the repugnance of the UCCJA (and any version or parts thereto) to the UCCJEA and to the US Constitution. Additional Parties are required under 28 U. S. C. §2403(a) and (b).

ARGUMENT

Question #1:

The power provided by US Const. art. IV, §1, (second sentence) reads:

"And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Congress exercised this power by the Federal IV-D statute to require that a signed affidavit acknowledging paternity have the same status force and effect as a judicial proceeding, or "Judgment" under 28 U.S.C. §1738.[9]

In clear contravention, the Massachusetts Family Court Judge said:

"I want to point out very clearly that an Acknowledgment of Paternity is not a Judgment of Paternity in Florida ...or Massachusetts." (Transcript, Bristol, MA, 04W0515PA1, 2-1-08, p18 at 1-25, LaStaiti, J.)

The Massachusetts Appeals Court agreed saying:

"...the voluntary Acknowledgment of Paternity signed in Florida was not a 'proceeding in a court of another state where such court is exercising jurisdiction consistently with the provisions of the [PKPA]'..." (Mass. App. Ct. Decision, 2007-P-0374, 7-18-2008)

These statements not only invalidate the Federal IV-D Statute, and contradict Massachusetts State law,[10] but they contradict recent State

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[9] See 2000 UPA, §311, *comment*, citing 42 U.S.C. § 666(a) (5) (C) (iv).

[10] Mass. Gen. Law ch. 209C §11(a), "...the acknowledgment shall establish paternity as of the date it has been signed by such putative father and mother and shall have the same force and effect as a judgment of paternity.."

Supreme Court rulings expounding the congressional intent of the Federal IV-D Statute.

In 2004, the Illinois Supreme Court declared that the issue is not whether Paternity Affidavits *are* Judgments, but that they "must be given effect *as if they were*." *People ex rel. Dep't of Pub. Aid v. Smith*, 212 Ill.2d 389; see also, 45 Brandeis L.J. 59 (2006).

In 2006, the Florida Supreme Court agreed, *T.B. v. M.M.*, 945 So.2d 637, (2006), declaring that a Voluntary Acknowledgment of Paternity initially ***creates*** (emphasis added) a rebuttable presumption of paternity. But, once its sixty day rescission period expires it becomes conclusive, and "must be attacked by the same method of relief used to attack final orders and Judgments." *People, supra,* at *Hn8.*

A Paternity Affidavit must be given full faith and credit *as if it were* a judicial adjudication, or *Judgment* by operation of law, a final and appealable Judgment, decree - or simply - a statutory '*court order*' or a "quiescent Judgment" (Quoting Justice Hill of the Wyoming Supreme Court) that establishes paternity and grants co-equal parental rights.

It is nonsensical to assume that Congress would have taken such extraordinary steps to create two *equivalent* methods of establishing paternity, if one invariably constitutes a *judicial proceeding*, and the other is not vested and afforded the same *effect.*

"Does this Apply to all Paternity Affidavits?"

The "simple civil process for voluntarily acknowledging paternity *seemingly* extends only to hospital-based acknowledgments executed immediately before or after birth, and to State

agency establishment services. 45 Brandeis L.J. 59, 2006, at 57.

To be subject to federal guidelines, the Commissioners of the 2000 UPA implicitly state that an Acknowledgment of Paternity must be part of a "record."[11]

To acquire "judicial status, force and effect" the document must complete its journey through the state Vital Statistics Office, where it will be filed and maintained in the child's official state birth records.[12]

Questions #2 and #3:

The PKPA left the individual states to determine what proceedings are to be considered "child custody proceedings." As the crux of this case, conflicting contentions exist concerning whether a *paternity* proceeding invokes the PKPA because the UCCJA and the UCCJEA give effect to *paternity* proceedings differently.

Quite simply, in 46 states, under the UCCJEA, a *paternity* proceeding is now *considered* a child custody proceeding, but in Massachusetts, Vermont, New Hampshire and Missouri, under the UCCJA, it's not.

Repugnance of the UCCJA

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[11] 42 U.S.C. § 666(a)(5)(M), directing that acknowledgments be "filed with the State registry of birth records..."(2000 UPA, §302(a) (1)).

[12] Should parents choose not to establish paternity at the hospital, or in a trial Court, they may download a Paternity Affidavit from the internet, and signed it in front of a notary at a State Vital Statistics Office, where they will be explained their rights and responsibilities, akin to had the proceeding occurred at the hospital.

The UCCJEA contains a repealing clause against the UCCJA, and all parts of the Act (UCCJEA, section 404), which necessarily begs the question: How does Massachusetts, Vermont, New Hampshire and Missouri validly rule by it?

As a manifestation of Federal law,[13] quoting *Henderson's Tobacco*, 78 U.S. 652, *Hn1*, (1870), "Acts are sometimes held to be repealed by subsequent enactments, though the latter contain no repealing clauses. This is always the rule when the provisions of the latter acts are repugnant to those of the former, so far as they are repugnant. The enactment of provisions inconsistent with those previously existing manifests a clear intent to abolish the old law."

"When there are two acts upon the same subject, the rule is to give effect to both, if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even where two acts are not, in express terms, repugnant, yet, if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." *Id.*

The Commissioner's of the UCCJEA redressed the extra-state functions of the UCCJA giving it new definitions and provisions to closely mirror the intent

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[13] The PKPA is, in effect, "a manifestation of Congress' intent to require all States to adopt the UCCJA." *Evans v. Evans*, 668 F. Supp. 639, *Fn14*, (1987), citing *Thompson v. Thompson*, 798 F.2d 1555 *Fn13* (Statements of Sen. Wallop).

and purpose of the PKPA. Overwhelmingly adopted by 46 states, the Commissioners direct[14] every offense of the UCCJA impliedly prohibiting its use in construing the PKPA.[15]

Massachusetts is one of four States that still retains the UCCJA in its statutes.[16] As early as 1987 the UCCJA was proven to be an "*imperfect remedy*," *Id.* Many States varied in their interpretations of the Acts requirements. Distinguishable to our case, some states concluded that the Act permits it to modify another state's custody determination as long as it has jurisdiction under the Act to issue an *initial* order. *Id.* The UCCJA was subsequently amended to comply with the federal PKPA.

In 1997, the "*defects and failings*" of the UCCJA, *Staats v. McKinnon*, 899 So.2d 357, *Hn37*, (2006), prompted the complete revision of Act.

The UCCJEA was adopted in Florida on October 31, 2002, and is wholly different from the UCCJA in critical jurisdictional areas.[17]

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[14]"...an Act directing how a former act shall be construed, is inoperative on the past, though controlling in [the] future." Compare, *United States v. Claflin*, 97 U.S. 546 (1878).

[15] The UCCJA "has no continuing validity following the enactment of the UCCJEA" *Staats v. McKinnon*, 899 So.2d 357, *Hn38* (2006), because it "inadvertently reincorporates the defects and failings of the UCCJA into the UCCJEA under the guise of statutory interpretation." *Id. at Hn37.*

[16] Mass. Gen. Law ch. 209. §§ 1 thru 14. The annotated laws of Massachusetts cite the "MCCJA" as a derivative version of the original 1968 UCCJA, last revised in 1983 and taken from the Uniform Child Custody Jurisdiction Act. See generally Ann., 96 A.L.R.3d 968 (1980).

[17] "The UCCJEA was intended to rectify the shortcomings of the UCCJA and resolve conflicting case law that had risen under

Revised UCCJEA

The Appeals Court said:

> "We also reject the father's argument that, because the Probate Court may have been prohibited from adjudicating or ratifying paternity, it also lacked jurisdiction to adjudicate custody." (A6)

Massachusetts failed to recognize (by its misplaced reliance on the UCCJA) that *paternity* proceedings are custody proceedings under the UCCJEA.

Paternity proceedings invoke PKPA §1738A (d) by the UCCJEA as a "child custody determination," and tangentially, invoke the *child support* modification prohibitions of PKPA §1738B (d) under the UIFSA from the legal establishment of parentage. (See Figure 1, page 29)

By the 21st century PKPA, the UCCJEA promotes the *concept* of custody as a "complex bundle

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the UCCJA. Because the UCCJEA is intended to correct the problems that arose under the UCCJA, cases resolved under the UCCJA must be viewed with caution." *In re Marriage of Madison*, 2007 Wash. App. Lexis 1732, Hn2, (2007); *Benson v. Benson*, 2003 ND 131, 2003 N.D. LEXIS 150, Hn2, (2003); *Watson v. Watson*, 272 Neb. 647, 2006 Neb. LEXIS 168, Hn5,(2006) "The UCCJEA was intended to resolve jurisdictional conflicts that has risen under the UCCJA do to unclear language and inconsistent application. The goal of uniformity under the UCCJEA can be realized only if trial Courts in each State make requisite considerations under the Act and follow its procedures."; "The jurisdictional analysis of the UCCJEA differs from that of the UCCJA..." *Straight v. Straight*, 195 S.W. 3d 164, Hn6, (Tex App. San Antonio 2006); [The UCCJEA] dissimilar in "critical respects." *In re Marriage of Fontenot*, 2003 MT 242, 2003 Mont. LEXIS 418, Hn6, (2003).

of rights and obligations arising from the parent-child relationship," quoting *Price v. Bright*, Tenn. App. LEXIS 40(2005).

It dictates that *paternity* cases, though they do not always involve the issue of custody, nevertheless have an impact on the custody of or visitation with a child. The purpose and intent of the PKPA is to recognize these proceedings, "whether or not the issue of custody is specifically disputed." *F.H. v. K.L.M.*, 740 P.2d 1006, (1987).

Indeed, paternity actions *provide for* custody orders and shared parental responsibilities, "as the equity and justice of the matter may require." *Kochinsky, infra at Hn5.* (UCCJEA, Prefatory Notes, §4, *Specification of what custody proceedings are covered*). See *Staats v. McKinnon*, 942 So. 2d 82 (2005), *Straight v. Straight*, 195 S.W. 3d 164 (2006), *Sanchez v. Fernandez*, 915 So.2d 192 (2005); such as *Greenhough v. Goforth*, 354 Ark. 502 (2003); *In the Interest of K.L.O-V.*, 151 P.3d 637 (2006); *Sinicropi v. Mazurek*, 273 Mich. App. 149 (2006); *Robert J. v. Catherine D.*, 134 Cal. App. 4th 1392(2005), *Kochinsky v. Moore*, 698 So. 2d 397, *Hn5*, (1997), and *Romans v. Fulgham*, 939 So.2d 849 (Fla. 2006).

Kindly note the dates above - the UCCJEA brought forth new definitions[18] and applies the *term*

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[18] The UCCJEA now defines the word "Court" as, "an entity authorized under the law of a State to establish, enforce, or modify a child-custody determination." The Appeals Court presumed the vernacular, or everyday ordinary meaning of the word, by rejecting the notion that a Paternity Affidavit was a "*proceeding in a court.*"

"Child custody proceeding"[19] to all child-related legal proceedings that *may* involve the issue of custody or visitation with a child.

Here however, instead of using the UCCJEA and the UIFSA respectively, Massachusetts used the obsolete UCCJA independently to undermine the effect of the decree:

The Massachusetts Family Court said:

> "...the [Paternity Affidavit] signed by father is not a custody determination under the PKPA. Therefore Massachusetts could not have violated the PKPA because there was no custody determination for this court to enforce or modify. This court was free to exercise subject matter jurisdiction and enter the paternity judgment." "[It is] not significant to trigger the UCCJA or the UCCJEA" (Findings, 11-15-06, Transcript, 04W0515PA1, 2-1-08, p18 at 1-25, LaStaiti, J.)

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[19] "Child custody proceedings" is defined in Fla. Stat. ch. §61.503(4) (2003) and Fla. Stat. ch. §61.501-.542 (2003), to include proceedings for dependency or paternity in which the issue of legal or physical custody *may* appear. *E.K. v. Dep't of Children & Family Servs*, 874 So. 2d 720, (2004). *Involuntary* paternity actions, such as those filed by or through the Department of Revenue for the purpose of collecting child support are not included. In these cases, the issue of "custody" and "visitation" are never an issue. Compare *Sanchez v. Fernandez*, 915 So.2d 192, (2005) (a rare paternity case where it was determined that the UCCJEA did not apply, because the mother truly only wanted child support and the father did not care about custody).

By the UCCJEA and the UIFSA, once parentage is legally established, any further proceedings are considered *modification* proceedings for subsequent awards of custody and/or support. *Romans v. Fulgham*, 939 So. 2d 849, (2006).

Quoting *Sanchez v. Fernandez*, 915 So.2d 192, *Hn8*, (2005), "any determination of paternity also involves a determination of custody", and the UCCJEA does not prohibit Florida courts from maintaining subject matter jurisdiction over a paternity action. *Id. at Hn8.*

Quoting *Eller v. Thomas*, 586 So.2d 480, *Hn2*, (1991), "The court which determines paternity shall retain jurisdiction of the cause for the purpose of entering such other and further orders as changing circumstances of the parties may in justice and equity require", citing, Fla. Stat. §742.06, (Jurisdiction retained for Future Orders).

The UCCJEA's New Provisions

The UCCJEA contains new provisions meant to mirror the intent and purpose of the PKPA.

The new 'extended home State provision' is narrower than the comparable provision of the PKPA and applies "regardless of whether a proceeding was ever (emphasis added) commenced in the home State," (UCCJEA, prefatory notes, §303, Duty to Enforce) and whenever (emphasis added) a "contestant" remains in the home State. (UCCJEA, prefatory notes, Art. 2, §201, comment, ¶3).

The UCCJA had no such provision. This is clearly demonstrated by the Family Court's statement:

"*Indeed, after the child resided in Massachusetts for six month, Florida lost any jurisdiction it had under its statutes*" (Order, Motion to Vacate, 11-15-2006, MA, Bristol, 04W0515PA1, LaStaiti, J.)

And the Appeals Court saying:

"Because the Probate and Family Court judge properly found that the child had lived in Massachusetts for at least six consecutive months prior to commencement of the custody proceeding, Massachusetts was the child's home State, and the jurisdiction was proper. (Decision, Mass. App. Ct., 2007-P-0374, 7-18-2008).

The UCCJA allowed states to "find" jurisdiction (Here, under M.G.L. c. 209B, §1) by the antiquated presumption that "home State" jurisdiction shifts "automatically"[20] after a period of six months, even if a child is removed "*by a person seeking the child's custody or for other reasons.*" (UCCJEA, prefatory notes, Art 2, §201, *comment*).

The UCCJEA abolished this flaw. It is no longer necessary to prove unjustifiable conduct or why a child has been taken,[21] "the only inquiry

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[20] "The automatic loss of jurisdiction, without any factual determination would add uncertainty, diminish the oversight ability of the courts, and increase conflicts between States..." *Dep't v. Donna J*, 139 N.M. 131 (2006) (In the Matter of Jessica).

[21] The Massachusetts Family Court held that Petitioner must prove unjustifiable conduct, "and without such proof, it was free to exercise jurisdiction." (Memorandum, 11-15-06, Bristol, case no. 04W0515PA1, p6.)

relates to the status of the person left behind,[22] and for a determination that the child has been removed by a contestant or for other reasons." (UCCJEA, prefatory notes, §201, *Initial Child Custody Jurisdiction*, comment, §1, ¶2)

Under the UCCJEA from the birth of a child, a state retains jurisdiction no matter how long a child is gone, why he/she is removed, and regardless of whether a proceeding is "ever" commenced in the home (birth) State.

> "Indeed, recognition of the exclusive, continuing jurisdiction of the "home state" is one of the bedrock principles of the UCCJEA. Only the home state itself can decide that it will no longer exercise such jurisdiction." Hector G. v. Josefina P., 2 Misc. 3d 801, Hn11 (2003).

The point is to enforce the statutory requirement that a removing parent must obtain a judicial Court order *prior to* removing their child from his home State and from another "contestant" entitled to the custody of or visitation.

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[22] Compare the virtually identical case *Decker v. Lyle* 848 So. 2d 501 (2003). No child-related proceeding had ever commenced in Florida. In accordance with the UCCJEA, the only questions asked concerned the father in Florida. The Indiana Court held it was without jurisdiction and remanded the proceedings to Florida. Florida granted temporary custody of the newborn child to the father in Florida, and scolded the mother for the "surreptitious unilateral removal of the child from Florida." There was no discussion about time limits, the age of the child, nor how long the child had been in Indiana.

The UCCJA's Repugnance to the UIFSA

Extreme irony exists here.[23] The Appeals Court stated:

> "We also reject the father's argument that, because the Probate Court may have been prohibited from adjudicating or ratifying paternity, it also lacked jurisdiction to adjudicate custody." (A3)

Prejudiced from the UCCJA, the Appeals Court failed to recognize that the infringement upon another State's establishment of paternity is expressly prohibited because they now invoke the *custodial* and (emphasis added) the *support* modification prohibitions of the PKPA under the UCCJEA and the UIFSA.

As a normal conflict of law, Massachusetts has ruled under the presumption that jurisdiction under the UCCJA to enter an initial order or to modify *custody* also allows jurisdiction to enter an initial order or modify *child support.*[24]

In determining jurisdiction over *child support*, PKPA §1738B (i) vests continuing exclusive jurisdiction to the "issuing state," which is now defined by the UIFSA as the State that either

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[23] Quoting the Massachusetts Continuing Legal Education (MCLE), §2.10.4, *Full Faith and Credit to Out-of-State Acknowledgments and Adoption of UIFSA*; citing 42 U.S.C. §666(c) (3) (f) – "The relitigation or ratification of paternity establishments is expressly prohibited in interstate cases."

[24] The UIFSA alone provides the mechanism for child support jurisdiction. See *McCaffery v Green*, 931 P.2d 407, *Fn9*, (Alaskan Supp. Ct. 1997) (Ruling under the presumption that jurisdiction under the UCCJA over *custody*, also allows jurisdiction over *child support).*

renders a judicial child support order or (strong emphasis added) establishes a legal determination of parentage for a particular child.[25]

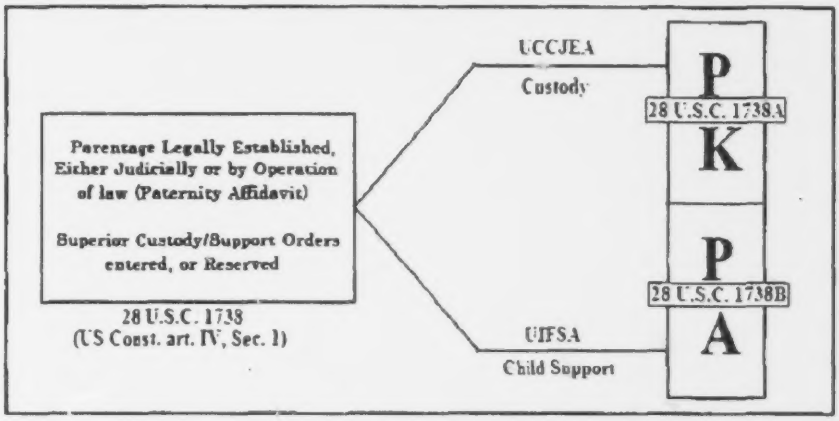

Figure 1. "21st Century Child Custody Jurisdiction." This diagram states what is clear under US Supreme Court decisions; the bases of jurisdiction for *child custody* and for *child-support* runs on separate tracks, compare *May v. Anderson*, 345 U.S. 528 (1953) with *Kulko v. Superior Court*, 436 U.S. 84 (1978).

It is precisely for this reason why the Commissioner's of the 2000 UPA proclaim that a Paternity Affidavit, as a legal determination of parentage, invokes the *support* modification sections of PKPA §1738B, because it *acts like* an initial "child support order."

The UIFSA provides a federalized procedure applicable to all states to provide only one

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[25] PKPA 28 U.S.C. 1738B(i); Registration for Modification.— "If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the non-movant for the purpose of modification."

Tribunal.[26] It borrows its language from the UCCJEA to create a tightly integrated paternity registry 'one support-order' system. *Staats v. McKinnon*, 942 So.2d 82, (2005).

The jurisdictional revisions of the UCCJA "harmonize with the provisions of the UIFSA" (UCCJEA, Prefatory Notes, *Revision of the UCCJA*). The UIFSA extends only to the issues of paternity and parentage. "Before applying the jurisdictional analysis of the UCCJA or the UISFA and determining whether one or both apply, the court must first determine to what degree the issues are intertwined." *Straight v. Straight*, 195 S.W.3d 461, *Hn1*, (2006).

Question #4: (Subsidiary Question)

It absolutely must be deemed unconstitutional for two jurisdictionally divergent State Acts to interpret the Federal PKPA in such a way to treat citizens, resident and nonresident, unequally.

Case in point: in the nearly identical case, *E.N. v. E.S.*, 67 Mass. App. Ct. 182 (2006), a child was unilaterally removed from his home State of Puerto Rico[27] (a state that has not adopted the

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[26] (UIFSA) "Issuing state," the state in which a tribunal issues a support order or renders a judgment determining parentage; "Tribunal" a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage;"Issuing tribunal," the tribunal that issues a support order or renders a judgment determining parentage.

[27] 28 U.S.C. §1738A(b)(8), "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States. Under

UCCJEA or the UCCJA) and taken to Massachusetts.

Of course, nary following any conflict of law rules, using the UCCJA, citing an over-abundance of UCCJA case law, Massachusetts "*found*" jurisdiction to be in Massachusetts.

Quite necessarily, Petitioner alleges a conspicuously offensive violation of US Const. art. IV, §2. Though Puerto Rico has not adopted either Act, the UCCJEA and the UIFSA must be deemed the 21st century interpretive manifestation[28] of the meaning, purpose and intent of the PKPA.

This is consistent with the constitutional guarantee that citizens shall enjoy equality in every state · with regard to fundamental rights; discriminating legislation; equal protection of laws; and conflict with a supreme law of the land.

Under the Privileges and Immunities Clause of US Const. art. IV, §2, quoting *Paul v. Virginia*, 75 U.S. 168 (1868), cited in *Saenz v. Roe*, 526 U.S. 489 (1999), this Court said:

> "It [is] undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage

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the UCCJEA, other countries, or nationalities are to be referred to as "States."

[28] The PKPA is, "a manifestation of Congress' intent to require all States to adopt the UCCJA." *Evans v. Evans*, 668 F. Supp. 639, *Fn14*, (1987), citing *Thompson v. Thompson*, 798 F.2d 1555 *Fn13* (Statements of Sen. Wallop).

> in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws."

Because the UCCJEA has repealed its predecessor, and is a manifestation of Federal law - with respect to the PKPA's "privileges" and "immunities" bearing upon the vitality of the nation as a single entity, this Court must not deviate from the principle stated in *Paul* that the Privileges and Immunities Clause of the US Constitution has full bearing upon all citizens....*NOT* just those citizens in UCCJEA states.

Reasons for Granting the Writ

1. Certiorari is warranted by: (a) the aggravated usurpation of statutory authority under the US Constitution as implemented by Federal law; (b) the violation of longstanding, firmly established rulings by this Court; (c) the division of PKPA case law which has declared the jurisdictional authority of the UCCJA invalid; (d) and clear abuse of discretion.

Absent the corrective supervision by this Court, the interpretation of the PKPA will remain divided by the conflicting split of authority of two separate but divergent Uniform State Acts.

The Massachusetts Appeals Court's ruling under the UCCJA is an unconstitutional indulgence

in the prerogatives of a sovereign[29] nation. It has ignored the rights, obligations, and immunities derived from a custody proceeding given effect under Florida's UCCJEA and the UIFSA.[30]

Petitioner sought full faith and credit to Florida's decree under the PKPA by US Const. art. IV, §1, citing *Williams v. North Carolina*, 325 U.S. 226, *Hn3*, (1945), as it was rendered by the UCCJEA and the UIFSA - and motioned for the Family Court to decline jurisdiction and remand the proceedings to Florida.

Massachusetts has undermined Florida's jurisdiction and declared in all manner of speaking:

> "We will not honor Paternity Affidavits as Judicial Proceedings, nor will we honor any of the new provisions of the UCCJEA or the UIFSA. We will only sanction child-related proceedings under the PKPA that conform exclusively to the jurisdictional analysis of our MCCJA and its case law. Therefore, after 6 months, we retain exclusive jurisdiction over any child brought to our state...."

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[29] "The animating purpose of the full faith and credit command, U.S. Const. art. IV, § 1, is to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." *Baker by Thomas v. GMC*, 522 U.S. 222, *Hn3*, (1998).

[30] Courts may not employ their own rules in determining the effect of state judgments, but must accept the rules chosen by the state from which the judgment is taken. *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, *Hn2*, (1996).

Notwithstanding the considerable loss of legal remedies and due process rights suffered by left-behind parents that sign Paternity Affidavits, this denies a state of its sovereign right to exercise "its own privity, and its own set of mutual rights and obligations to the people who sustain it and are governed by it." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring).

Regardless of whether or not a state adopts the UCCJEA, or fails to employ the UIFSA, it may not exercise *self-governing* power and refuse to give effect to a decree as it was rendered by the Legislative Act chosen by a particular state.[31]

Failing to do so, is an absolute abuse of discretion. See *United States v. Lehigh V. R. Co.*, 220 U.S. 257, (1911). (An absolute abuse of discretion exists where the lower court's refusal is in direct conflict with the explicit language of a US Supreme Court mandate); *Mallard v. United States District Court*, 490 U.S. 296, 309 (1989) (noting a clear abuse of discretion may justify issuance of a writ) (quoting

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[31] "When faced with a state-court judgment relating to an exclusively federal claim, a federal court must first look to the law of the rendering state to ascertain the *effect* of the judgment." *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, *Hn7*, (1996); U.S. Const. art. IV, § 1, as implemented by 28 U.S.C. §1738 not only commands that full faith and credit must be given in each state to the public acts, records and judicial proceedings of every other state but it adds that Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof. *Milwaukee County v. M. E. White Co.*, 296 U.S. 268, *Hn4*, (1935).

Banker's Life & Casualty Co. v. Holland, 346 U.S. 379, 383 (1953)).

2. The Massachusetts Appeals Court has distorted, altered and/or abrogated the Federal IV-D Statute, narrowing its scope and congressional intent in such a way that it has resolved a Federal issue in conflict with recent State Supreme Court rulings, and well beyond what a "fair reading" of the statute would produce, creating constitutional, jurisdictional and due process problems – a substantially recurring issue that has not been, but should be settled by this Court.

Justice Hill of the Wyoming Supreme Court adamantly dissented, educing that failing to give a Paternity Affidavit its proper judicial effect, "perpetuat[es] a falsity [that] outweighs the enormous preference that the law affords to ferreting out the truth." *DNW v. Dep't of Family Servs.*, 2007 WY 54 (Paternity Affidavit ignored by majority opinion).

Justice Hill referred to a Paternity Affidavit, as a "*Quiescent Judgment* that sets in stone the legal rights and remedies of the parents."

Because the Federal IV-D Statute is vague, more and more courts are failing to provide Paternity Affidavits their just effect, which wholly negates a myriad of constitutionally protected rights.

The most important being: Petitioner has been held out as having no parental rights as a "putative" father - as if his taken son was a "*filius nullius*," (Latin for "*son of nobody*").

The pervasiveness of this issue is far-reaching – potentially affecting millions of children and

impinging on the constitutionally protected rights of their left-behind parents.

Justice Hill declares that issues involving Paternity Affidavits are being raised with "considerable frequency." Several state Supreme Courts have attempted to ascertain their meaning and effect in conjunction with parental rights, however its jurisdictional principles have not yet been promulgated.

The "rejection" of Petitioner's argument under the Federal IV-D Statute as being, "*unsupported by Massachusetts or Florida law,*" must be deemed as having invalidated the Federal IV-D Statute – a passive presumption that a properly executed Acknowledgment has no intrinsic extra-state value.

In dealing with a Paternity Affidavit, no court could render a Judgment unless it had considered and rejected the Statute. See *Herb v. Pitcairn*, 324 U.S. 117, 128 (1945) (decision of a Federal question must be essential to the disposition of the case); *Whitney v. California*, 274 U.S. 357, 361 (1927) (a federal question constituting an appropriate ground for such review must be presented).

Denying review will impose needless and continuing litigation burdens and disarray among the courts, and significantly impair the ability of the states to deal with interstate jurisdictional issues concerning non-marital children legitimized via Paternity Affidavit.

The existing disarray is already both mature and pervasive.

3. Certiorari should be granted as a vindication of public justice: (a) to promote interstate comity in

furtherance of legal establishments of paternity by signed affidavit, (operation of law) under the nationally binding and vital PKPA; and (b) to protect and guarantee the constitutionally protected parental, substantive and procedural due process rights, liberty interests, obligations, privileges and immunities of their unwed signatories.

Absent review, legally established committed fathers will continue to be treated unfairly under the PKPA, by the unconstitutional common-law presumption, that the mothers of children born out of wedlock have the sole custodial right to take their child wherever they want.[32]

This is an injurious breach of the salutary principle that, "litigation once pursued to judgment shall be conclusive of the rights and obligations of the parties in every other court as in that where the judgment was rendered." *Morris v. Jones*, 329 U.S. 545, *Hn4*, (1947).

This Court must protect the liberty interests[33] vested through Paternity Affidavits to guarantee the

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[32] When an unwed father demonstrates a full commitment to the responsibilities of parenthood by "com[ing] forward to participate in the rearing of his child," *Caban*, 441 U.S. at 392 [*Caban v. Mohammed*, 441 U.S. 380, 99 S. Ct. 1760, 60 L. Ed. 2d 297 (1979)]. His interest in personal contact with his child acquires a substantial protection under the Due Process Clause." *Id.* at 389, n.7.

[33] "This Court must not decline to protect Petitioner's rights when it is plain that the fair result of the [] Court's decision is to deny them." "There can be no doubt that if full faith and credit [is] denied to a judgment rendered in another state upon a suggestion of want of jurisdiction, without evidence to warrant [such] finding, the United States Supreme Court must

co-equal parental right to the love and companionship, and decision making concerning the care, custody, and control of children under the 1st, 5th, 9th and 14th Amendments of the US Constitution. *Doe v. Irwin*, 441 F Supp 1247, (1985); *Wallace v Jafree*, 472 U.S. 38, (1985); *Elrod v. burns*, 427 U.S. 347, (1976); *Yick Wo v. Hopkins*, 118 U.S. 356, (1886); *Regenold v. BabyFold, inc.*, 435 U.S. 963, (1977).

Petitioner's willingness to accept fines, sanctions, contempt and imprisonment in Massachusetts must be deemed "a vindication of public justice," *United States v. Claflin*, 97 U.S. 546, (1878), to protect the fundamental rights and responsibilities vested to those parents that dutifully acknowledge paternity and carry out the full responsibility of being a parent only to have their children spirited away to a distant state.

4. Certiorari should be granted in aid of the appellate jurisdiction of this Court to enforce compliance with the Federal Constitution and Federal law due to an aggravated and substantial usurpation of power.

Florida's jurisdiction has been pervasively usurped by the unconstitutional use of an obsolete Uniform State Act. This justifies an inquiry as to whether Petitioner's rights, liberties, immunities and privileges have been denied or have not been given due recognition in substance or effect.[34]

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enforce the constitutional requirement." See *Smithsonian v. St. John*, 214 U.S. 19, (1909).

[34] "Whether the right is denied, or not given due recognition, by a state supreme court is a question as to which claimants are

The US Constitution grants this Court power under §1257(a) in the best interests of the general public, to exercise its ultimate appellate authority to intervene in any such aggravated and substantial usurpation of power. See *Ex Parte United States*, 287 U.S. 241 (1932) (the power of the Supreme Court rested on its ultimate authority over the case); *Schlagenhauf v. Holder*, 379 U.S. 104, (1964) (Writ issued by special circumstances alleging substantial usurpation of power).

5. The advent of the UCCJEA and the UIFSA warrants the weighing of the UCCJA, its case law, any of its versions, and any parts thereto, for repugnance against the US Constitution.

This petition alleges deprivations of substantive and procedural due process, constitutional and of civil rights as well as jurisdictional problems from the use of the obsolete precepts of a repealed Uniform State Act, its versions, its case law, and any parts thereto.

The UCCJA must be examined for repugnance to the US Constitution having created a socially destructive precedent and a safe-haven for the parental abductors by undermining the preemptive jurisdiction vested by the UCCJEA and the UIFSA. This issue is necessarily involved.

Absent review, states will choose blindly between the UCCJA and the UCCJEA to find the true meaning, intent and purpose of the PKPA. See generally, *Lawler v. Walker*, 55 U.S. 149, (1852) (Conflict of a State law with the US Constitution,

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entitled to invoke the United States Supreme Court's judgment." See *Ward v. Love County*, 253 U.S. 17, *Hn3*, (1920)

and a decision by a State court in favor of its validity, is necessarily involved in the decision, and the State court could not have given a judgment without deciding it.)

Conclusion

The Massachusetts MCCJA and any other prevalent version of the UCCJA, or parts thereto, must be deemed unconstitutional by this Court.

Massachusetts is in desperate need of the supervisory jurisdiction of this Court to properly align its appellate jurisdiction with the 21st century PKPA.

Massachusetts has exceeded the authority allowed by U.S. Const. art. IV, §1, implemented by 28 U.S.C. §1738 and the Equal Protection and Due Process Clause of the 14th Amendment, by failing to give *effect* to Florida's paternity proceeding by the UCCJEA and the federally mandated UIFSA, as a "child custody determination" and "child support order" preserving jurisdiction under PKPA 28 U.S.C. §1738A (d) and §1738B (d).

Certiorari should be granted, and the Massachusetts Appeals Court's decision should be summarily reversed.

ORIGINAL

Prayer

Petitioner humbly requests the following relief:

1. Render a declaratory judgment proclaiming Florida's continuing exclusive jurisdiction in furtherance of its lawfully rendered child custody proceeding under (PKPA) 28 U.S.C. 1738A(d) and B(d);
2. Render a declaratory judgment proclaiming unconstitutional the continued use of the UCCJA, the MCCJA, and any version or parts thereto;
3. Reverse the July 18, 2008 decision of the Massachusetts Appeals Court.

Respectfully Submitted,

ORIGINAL

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COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

JENNIFER WALKER *vs.* ALLEN F. STEWART.

07-P-374

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant father appeals from orders of a judge of the Probate and Family Court denying his motions to vacate a judgment of paternity as void. We affirm.

The child was born in Florida in February, 2003, at which time the unwed mother and father signed a voluntary acknowledgment of paternity. In March or April, 2003, the mother and child moved to Massachusetts. The mother initiated custody proceedings in Massachusetts in April, 2004, by a complaint for paternity. In March, 2005, the Probate Court entered judgment on the mother's complaint, incorporating the parties' stipulation that (1) the mother would have physical custody, (2) both parents would have legal custody, (3) the father would dismiss emergency custody proceedings he had initiated two days earlier in Florida, and (4) Massachusetts would retain all jurisdiction. In October, 2006, well over a year after the March, 2005, judgment, the father moved to vacate the judgment, arguing that Massachusetts did not have

subject matter jurisdiction over the proceedings. [FN1] The motion was denied.

Jurisdiction over custody matters is governed by G. L. c. 209B, § 2(*a*)(1), inserted by St. 1983, c. 680, § 1, which provides:

'(*a*) Any court which is competent to decide child custody matters has jurisdiction to make a custody determination by initial or modification judgment if:

(1) the commonwealth (I) is the home state of the child on the commencement of the custody proceeding. . . .'

'Home state' is defined as:

'the state in which the child immediately preceding the date of commencement of the custody proceeding resided with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned.' G. L. c. 209B, § 1, inserted by St. 1983, c. 680, § 1.

Because the Probate and Family Court judge properly found that the child had lived in Massachusetts for at least six consecutive months prior to commencement of the custody proceeding, Massachusetts was the child's home State, and the jurisdiction was proper. Nor did G. L. c. 209B, § 2(*d*),

inserted by St. 1983, c. 680 § 1, [FN2] bar jurisdiction where no custody proceedings were initiated in any other State prior to the April, 2004, commencement of custody proceedings in Massachusetts.

We reject the father's argument, unsupported by Massachusetts or Florida law, that the voluntary acknowledgment of paternity signed in Florida was a 'proceeding in a court of another state where such court of that state is exercising jurisdiction consistently with the provisions of this section for the purpose of making a custody determination,' such that a Massachusetts court may not exercise jurisdiction. See G. L. c. 209B, § 2(*d*).

We also reject the father's argument that, because the Probate Court may have been prohibited from adjudicating or ratifying paternity, it also lacked jurisdiction to adjudicate custody. It is true that, under Florida law, the acknowledgment 'constitute[d] an establishment of paternity,' and that '[j]udicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.' See Fla. Stat. ch. 742.10(4) & (5) (2007). See also G. L. c. 209C, § 2, as appearing in St. 1998, c. 64, § 206 (requiring Massachusetts courts to give 'full faith and credit' to 'a voluntary acknowledgment of parentage in accordance with the law of another state'). However, despite the styling of the complaint as a complaint for paternity, paternity was uncontested and the

proceeding focused instead on custody matters, as reflected in the March, 2005, order. Compare *Sanchez v. Fernandez,* 915 So.2d 192, 192-193 (Fla. 2005) (where paternity was contested, but custody was uncontested, court had jurisdiction to adjudicate paternity even though it would have lacked jurisdiction to adjudicate custody).

The remaining arguments raised by the father need not detain us. The father has waived any personal jurisdiction argument through his appearances in court and the motion judge correctly found compliance with the Parental Kidnapping and Prevention Act, 28 U.S.C. § 1738A (1994). We deny the mother's request for appellate attorneys' fees, but note that G. L. c. 208, §38, empowers the Probate Court judge to award fees under appropriate circumstances in the event of continued proceedings.

Order dated November 22, 2006, denying father's motion to vacate judgment, etc. affirmed.
Order dated February 6, 2007, denying father's motion to reconsider motion to vacate judgment affirmed.

By the Court (Perretta, Duffly & Grainger, JJ.),

s/

Entered: July 18, 2008.

[ATTESTED]
[BY]
[CLERK]

FN1. We note that the father never appealed the March, 2005, judgment.

FN2. Section 2(*d*) provides as follows: 'A court of the commonwealth shall not exercise jurisdiction in any custody proceeding commenced during the pendency of a proceeding in a court of another state where such court of that state is exercising jurisdiction consistently with the provisions of this section for the purpose of making a custody determination, except in accordance with paragraph (3) of subsection (*a*), unless the court of the other state shall decline jurisdiction pursuant to paragraph (4) of subsection (*a*) or shall stay its proceedings or otherwise defer to the jurisdiction of a court of the commonwealth.'

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

07-P-374

JENNIFER WALKER
vs.

ALLEN F. STEWART.

ORDER

The petition for rehearing filed by the Appellee having been considered it is ordered that the said petition be, and the same hereby is, denied.

By the Court (Perretta, Duffly & Grainger, JJ.),

s/
Assistant Clerk

Entered: August 21, 2008

[ATTESTED]
[BY]
[CLERK]

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court for the Commonwealth

ORDER

It is hereby Ordered, that the following Application for Further Appellate Review be denied:

FAR-17176

JENNIFER WALKER

vs.

ALLEN F. STEWART.

Bristol Probate & Family No. 04W0515PA1
A.C. No. 2007-P-0374

By the Court,

s/
Susan Mellen, Clerk

Entered: September 8, 2008

[ATTESTED]
[BY]
[CLERK]